



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/152546

PRELIMINARY RECITALS

Pursuant to a petition filed September 30, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 07, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioners FoodShare allotment has been correctly calculated for October 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pang Thoa Xiong
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was sent a notice dated September 16, 2013 that informed him that his FoodShare benefit would be reduced effective October 1, 2013 from \$200 a month to \$6 per month. The allotment for October was \$16.00 but reduced by \$10 by a recovery of a FoodShare overpayment. The reason for the reduction to \$16.00 was that Petitioner was receiving unemployment compensation insurance that the agency was not including in the FoodShare eligibility and allotment calculation.
3. Petitioner receives \$354.00 per week in unemployment compensation benefits.

4. Petitioner's household size is 1.
5. In determining Petitioner's FSD allotment the agency credited Petitioner with the following deductions: a standard deduction of \$152, a shelter deduction of \$290.55 based upon costs of \$525.65 and the utility allowance of \$450.00.
6. The agency determined that Petitioner has been overissued FoodShare for the period from July 1, 2012 through April 30, 2013 in the amount of \$1651.00. That overissuance claim was sustained by Division of Hearings and Appeals decision # FOP/152473 issued November 20, 2013. The agency has already initiated a recovery of that claim thus Petitioner's FoodShare allotment has been reduced by \$10.00 per month.

DISCUSSION

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has an elderly blind or disabled member. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.* For earned income that is received biweekly, the agency is directed to develop a biweekly average, and then multiply that figure by 2.15 to account for three-paycheck months. For weekly income, the multiplier is 4.3. *7 CFR §273.10(c)(2).*

Once a household passes the gross income test the following deductions are applied (*FSH, at § 4.6*):

- (1) a standard deduction - which currently is \$152 per month for a household of 1-3 persons, *7 CFR § 273.9(d)(1)*;
- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction – the utility allowance is a standard and is \$450.00 per month and the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).* There is a cap of \$478.00 on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. *FSH, §§ 4.6.7.1 and 8.1.3.*

Also relevant here is the following concerning recovery of overpayments:

7.3.2.6 Allotment Reduction

An overissuance due to any type of error will be recovered from a FS group participating in the program by reducing their allotment.

The type of error determines the amount that will be recovered each month.

1. Client/Nonclient error. CARES will reduce the allotment by the greater of 10% of the group's monthly allotment or \$10 each month. The \$10 minimum benefit level for 1 or 2 person groups applies before CARES reduces the allotment.

...

FSH, §7.3.2.6.

I have reviewed the agency calculations here, see Exhibit # 6, and do not find any errors.

Petitioner did note, however, that his shelter expense may be higher than allowed by the agency. He stated his mortgage is \$470.00 and he thinks his homeowners insurance may be more than higher than budgeted but he was not clear enough about that to do other than suggest he document the expense and provide it to

the agency. Changes reported in one month will affect the next month's benefits if the change affects benefits. *FSH*, §6.1.3.3.

CONCLUSIONS OF LAW

That the available evidence is sufficient to demonstrate that it correctly determined Petitioner's FoodShare allotment for October 2013.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

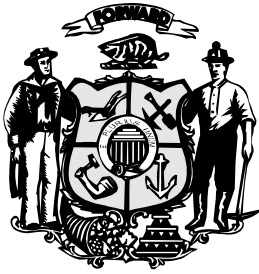
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of November, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 26, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability